

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: DIET DRUGS (PHENTERMINE/ FENFLURAMINE/ DEXFENFLURAMINE) PRODUCTS LIABILITY LITIGATION)	MDL DOCKET NO. 1203
)	
SHEILA BROWN, <i>et al.</i> v. AMERICAN HOME PRODUCTS CORPORATION)	CIVIL ACTION NO. 99-20593
)	
This document relates to:)	
)	
LINDA HARMON, <i>et al.</i> v. WYETH-AYERST PHARMACEUTICALS, INC. <i>et al.</i>)	CIVIL ACTION NO. 02-20082
)	
DUWANDA ROBBINS, <i>et al.</i> v. WYETH- AYERST PHARMACEUTICALS, INC., <i>et al.</i>)	CIVIL ACTION NO. 02-20081
)	
JANICE BINION, <i>et al.</i> v. WYETH-AYERST PHARMACEUTICALS, INC., <i>et al.</i>)	CIVIL ACTION NO. 02-20119
)	
LILLIAN CHANDLER, <i>et al.</i> v. WYETH- AYERST PHARMACEUTICALS, INC., <i>et al.</i>)	CIVIL ACTION NO. 02-20120
)	
PATRICIA MOSLEY, <i>et al.</i> v. WYETH-AYERST PHARMACEUTICALS, INC., <i>et al.</i>)	CIVIL ACTION NO. 02-20122
)	
MARY F. SANDERS, <i>et al.</i> v. WYETH-AYERST PHARMACEUTICALS, INC., <i>et al.</i>)	CIVIL ACTION NO. 02-20121
)	
- and -)	
)	
BRENDA STALLINGS, <i>et al.</i> v. WYETH- AYERST PHARMACEUTICALS, INC., <i>et al.</i>)	CIVIL ACTION NO. 02-20118
)	
)	

WYETH'S SUPPLEMENTAL MOTION TO DISMISS CERTAIN PLAINTIFFS

COMES NOW Wyeth and hereby supplements its Motion to Dismiss Certain Plaintiffs filed in the above actions on October 24, 2003. Wyeth respectfully moves this Court to enter an Order dismissing the additional plaintiffs listed below with prejudice on the ground set forth in Wyeth's October 24 motion, namely that they have not satisfied the medical eligibility

requirements necessary for prosecuting a downstream opt-out claim under the terms of a National Settlement Agreement to which they are a party.

On October 24, 2003, Wyeth filed a Motion to Dismiss Certain Plaintiffs in which it demonstrated, among other things, that under the terms of the National Settlement Agreement, plaintiffs who were not diagnosed by a Qualified Physician as FDA positive by an echocardiogram performed between commencement of diet drug use and the end of the screening period were not eligible to sue as an intermediate opt out and therefore their claims must be dismissed. *See* Wyeth's Memorandum in Support of its Motion to Dismiss Certain Plaintiffs at pp. 7-9. Wyeth then identified 135 plaintiffs in the above-captioned cases who, according to echocardiogram reports prepared by plaintiffs' own expert, were not FDA positive and asked the Court to dismiss those plaintiffs. *Id.* at 9-19. That motion has been fully briefed and the parties are awaiting the Court's ruling.

At the time Wyeth filed its original motion, not all of the plaintiffs in the above-captioned cases had produced echocardiogram reports to Wyeth. Since that time, however, 37 additional plaintiffs in the above-captioned cases have produced echocardiogram reports, prepared by his or her own diagnosing cardiologist, which report that plaintiff is not FDA positive. The following chart shows, case by case, the plaintiff, the diagnosis and the diagnosing cardiologist. For each of the plaintiffs identified below, the diagnosing cardiologist is Dr. Razzak Tai, an expert retained by plaintiffs in the diet drug litigation.

Binion, et al. v. Wyeth, et al. (Echo Reports attached hereto as Defendant's Exhibit A)

Plaintiff Name	Date/Provider	Echocardiogram Report	FDA Positive or Medically Eligible to Assert Downstream Opt-Out
Harviel, Sarah	06-25-01/Dr. Razzak Tai	Mitral valve shows normal structure and function. The aortic valvular function is	No

Plaintiff Name	Date/Provider	Echocardiogram Report	FDA Positive or Medically Eligible to Assert Downstream Opt-Out
		normal.	
McDaniel, Jr., Robert	06-25-01/Dr. Razzak Tai	Mild mitral regurgitation. The aortic valvular function is normal.	No
Rose, Alisha	06-25-01/Dr. Razzak Tai	Mitral valve shows normal structure and function. The aorta is of normal dimension. The aortic valvular velocity is normal.	No
Shaw, Shirley	10-27-01/Dr. Razzak Tai	Mild mitral regurgitation. The aorta is of normal dimension. The aortic valvular velocity is normal.	No
Westbrook, Melissa	06-24-01/Dr. Razzak Tai	Mitral valve is thickened with normal function. Slight aortic dilation with minimal systolic gradient.	No

Harmon, et al. v. Wyeth, et al. (Echo Reports attached hereto as Defendant's Exhibit B)

Plaintiff Name	Date/Provider	Echocardiogram Report	FDA Positive or Medically Eligible to Assert Downstream Opt-Out
Harmon, Linda	04-21-01/Dr. Razzak Tai	Mitral valve shows normal structure and function. A mild degree of aortic valve turbulence is present.	No
Murphy, Donna	04-22-01/Dr. Razzak Tai	Mitral valve has normal structure and function. The aortic valvular function is normal.	No
Noland, Debbie	04-22-01/Dr. Razzak Tai	Mitral valve is of normal structure and function. The aortic valvular function is normal.	No

Mosley, et al. v. Wyeth, et al. (Echo Reports attached hereto as Defendant's Exhibit C)

Plaintiff Name	Date/Provider	Echocardiogram Report	FDA Positive or Medically Eligible to Assert Downstream Opt-Out
Chalmers, Barbara	10-27-01/Dr. Razzak Tai	Mitral valve is not visualized. The aorta is not visualized	No

Plaintiff Name	Date/Provider	Echocardiogram Report	FDA Positive or Medically Eligible to Assert Downstream Opt-Out
		accurately. Technically poor study. Incomplete study.	
Follis-McClure, Jackie	06-25-01/Dr. Razzak Tai	Mild mitral regurgitation. The aortic valvular function is normal.	No
Hill, Debra	10-28-01/Dr. Razzak Tai	Mild mitral regurgitation. Trace aortic insufficiency.	No
Mosley, Patricia	02-24-00/Dr. Malcolm Taylor 02-21-01/Dr. Malcolm Taylor	Mild mitral regurgitation Mild mitral regurgitation.	No No
Prather, Joanna	10-27-01/Dr. Razzak Tai	Minimal mitral regurgitation. Aorta is of normal dimension. Aortic valvular velocity is normal.	No
Stewart, Charles	10-28-01/Dr. Razzak Tai	Minimal mitral regurgitation. Minimal aortic insufficiency.	No
Weathersby, Sharon	06-25-01/Dr. Razzak Tai	Mitral valve shows normal structure and function. Minimally dilated aorta and minimal aortic systolic gradient.	No

Sanders, et al. v. Wyeth, et al. (Echo Reports attached hereto as Defendant's Exhibit D)

Plaintiff Name	Date/Provider	Echocardiogram Report	FDA Positive or Medically Eligible to Assert Downstream Opt-Out
Beaver, Amanda	06-25-01/Dr. Razzak Tai	Mitral valve shows normal structure and function. The aortic valvular function is normal.	No
Cunningham, Kay	06-25-01/Dr. Razzak Tai	Mitral valve is thickened with normal function. The aortic valvular function is normal.	No
Dale, Sarah	10-28-01/Dr. Razzak Tai	Mild mitral regurgitation. Trace aortic insufficiency.	No
Holden, Cindy	06-25-01/Dr. Razzak Tai	Mitral valve shows normal structure and function. The aortic valvular function is normal.	No
Irby, Senatra	12-18-02/Dr. Razzak Tai	Mild mitral regurgitation. The aorta is of normal dimension.	No
Johnson, Rhonda	04-21-01/Dr. Razzak Tai	Mitral valve shows trace regurgitation. The aorta is of normal dimension. The aortic valve velocity is increased. A small systolic gradient of less	No

Plaintiff Name	Date/Provider	Echocardiogram Report	FDA Positive or Medically Eligible to Assert Downstream Opt-Out
		than 10 mmhg is present.	
Sanders, Mary	04-22-01/Dr. Razzak Tai	Mitral valve shows normal structure and function. The aortic valvular function is normal.	No
Shaw, Freddy	10-27-01/Dr. Razzak Tai	Minimal mitral regurgitation. The aorta is of normal dimension. Aortic valvular velocity is normal.	No
Williams, Virginia	04-21-01/Dr. Razzak Tai	Mild mitral regurgitation. The aortic valve has normal structure and function.	No

Stallings, et al. v. Wyeth, et al. (Echo Reports attached hereto as Defendant's Exhibit E)

Plaintiff Name	Date/Provider	Echocardiogram Report	FDA Positive or Medically Eligible to Assert Downstream Opt-Out
Alford, Kimberly	12-18-02/Dr. Razzak Tai	Mild mitral regurgitation. The aorta is of normal dimension.	No
Carpenter, Cathy	10-28-01/Dr. Razzak Tai	Mild mitral regurgitation. Minimal aortic insufficiency.	No
Cooper, Elayna	06-25-01/Dr. Razzak Tai	Mild mitral regurgitation. The aortic valvular function is normal.	No
Davis, Susan	11-14-01/Dr. Razzak Tai	Mild mitral regurgitation. Trace aortic insufficiency.	No
Givens-Rowan, Valerie	10-28-01/Dr. Razzak Tai	Mild mitral regurgitation. Minimal aortic insufficiency.	No
Johnson, Menalone	11-14-01/Dr. Razzak Tai	Mild mitral regurgitation. Trace aortic insufficiency.	No
Johnson, Ramona	06-25-01/Dr. Razzak Tai	Mitral valve is thickened with normal function. The aortic valvular function is normal.	No
McMillan, Bruce	11-14-01/Dr. Razzak Tai	Mild mitral regurgitation. The aorta is of normal dimension. Aortic valvular velocity is normal.	No
Preston, Carolyn	10-28-01/Dr. Razzak Tai	Mild mitral regurgitation. The aorta is of normal dimension. Aortic valvular velocity is normal.	No
Reed, Angela	06-25-01/Dr. Razzak Tai	Mitral valve is thickened with normal function. The aortic valvular function is normal.	No
Simpson, Carrie	10-27-01/Dr. Razzak Tai	Minimal mitral regurgitation. Aortic valvular function is	No

Plaintiff Name	Date/Provider	Echocardiogram Report	FDA Positive or Medically Eligible to Assert Downstream Opt-Out
		normal.	
Stallings, Brenda	04-22-01/Dr. Razzak Tai	Mitral valve shows normal structure and function. The aortic valvular structure and function are normal.	No
Stewart, Harriet	06-25-01/Dr. Razzak Tai	Mitral valve shows thickening with normal function. The aortic valvular function is normal.	No

In addition, three of the plaintiffs identified above should be dismissed for the additional reason that they did not ingest Pondimin or Redux. Specifically, plaintiffs Senatra Irby, Mary Sanders and Brenda Stallings testified during their depositions that they did not ingest Pondimin or Redux, only Phentermine. *See* deposition transcript of S. Irby at pp. 5-6, M. Sanders at 97-101, B. Stallings at pp. 121-129 (attached as collective Ex. F).

Accordingly, Wyeth now seeks to supplement its motion to dismiss to add the names of the plaintiffs identified in the chart above and respectfully requests that the Court dismiss those plaintiffs for the reasons set forth in its original motion.

A proposed Order embodying the relief requested is filed herewith.

Respectfully submitted,

AMERICAN HOME PRODUCTS CORPORATION and
WYETH-AYERST PHARMACEUTICALS INC.

By: /s/Heather M. Aby
WILLIAM M. GAGE, MSB #8691
HEATHER M. ABY, MSB #100749

THEIR ATTORNEYS

OF COUNSEL:

BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC
17th Floor, AmSouth Plaza
Post Office Box 22567
Jackson, Mississippi 39225-2567
(601) 948-5711

CERTIFICATE OF SERVICE

I, HEATHER M. ABY, one of the attorneys for Wyeth do hereby certify that I have this day served a true and correct copy of the above and foregoing document by mailing same by Federal Express Overnight Delivery upon:

H. Gray Laird, III
PAGE, KRUGER & HOLLAND, P.A.
10 Canebrake Boulevard, Suite 200 (39232)
Post Office Box 1163
Jackson, MS 39215-1163

Wilbur O. Colom
THE COLOM LAW FIRM
406 Third Avenue North
Post Office Box 866
Columbus, MS 39703

ATTORNEYS FOR PLAINTIFFS

SO CERTIFIED, this the 18th day of November 2004

/s/Heather M. Aby _____
HEATHER M. ABY

In the above-captioned case, and by first-class mail, postage prepaid, upon all other counsel required to be served by Pretrial Order No. 19 as follows:

Arnold Levin, Esquire
Levin, Fishbein, Sedran & Berman
510 Walnut Street, Suite 500
Philadelphia, PA 19106

CO-CHAIR -- PMC

John J. Cummings, III, Esquire
Cummings, Cummings & Dudenhefer
416 Gravier Street
New Orleans, LA 70130

CO-CHAIR -- PMC

Stanley M. Chesley, Esquire
Waite, Schneider, Bayless, Chesley Co., P.A.
1513 Central Trust Tower
One West Fourth Street
Cincinnati, OH 45202

CO-CHAIR -- PMC

Ms. Deborah A. Hyland
Plaintiffs' Management Committee
Constitution Place
325 Chestnut Street, Suite 200
Philadelphia, PA 19106

CO-CHAIR -- PMC

Michael T. Scott, Esquire
Reed Smith, LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103-7301

LIAISON COUNSEL FOR FENFLURAMINE/DEXFENFLURAMINE
DEFENDANTS

Edward W. Madeira, Jr., Esquire
Pepper Hamilton LLP
3000 Two Logan Square
18th & Arch Streets
Philadelphia, PA 19103

LIAISON COUNSEL FOR PHENTERMINE DEFENDANTS

Edward S. Weltman, Esquire
Goodwin Proctor LLP
599 Lexington Avenue, 30th Floor
New York, NY 10022

CO-LEAD COUNSEL FOR PHENTERMINE DEFENDANTS

Peter L. Resnick, Esquire
McDermott, Will & Emery
28 State Street, 34th Floor
Boston, MA 02109-1775

CO-LEAD COUNSEL FOR PHENTERMINE DEFENDANTS

SO CERTIFIED, this the 18th day of November 2004

/s/Heather M. Aby
HEATHER M. ABY

Jackson 981966v1